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1 johnmanibusan2255
2 LEONARDO M. RAPADAS
United States Attorney
3 KARON V. JOHNSON
Assistant U.S. Attorney
4 Sirena Plaza, Suite 500
108 Hernan Cortez Avenue
5 Hagåtña, Guam 96910
PHONE: (671) 472-7332
6 FAX: (671) 472-7334

7 Attorneys for the United States of America

FILED
DISTRICT COURT OF GUAM
AUG 25 2006
MARY L.M. MORAN
CLERK OF COURT

• 100

18 Pursuant to Rule 5 of the Rules governing Proceedings in the United States District
19 Courts under Title 28 U.S.C. § 2255, the United States opposes petitioner-defendant' motion to
20 Vacate, Set Aside, or Correct Sentence.

PROCEDURAL HISTORY

22 The time line set forth below is supported by Exhibits A-E filed in defendant's September
23 7, 2005, Motion for Clarification of Sentence and Amendment of Written Judgment, and in
24 Exhibits 1-4 filed as part of the government's Response on October 14, 2005.

25 1987, defendant committed the crime of possession with intent to distribute heroin;
26 1989, defendant was incarcerated in the Guam Department of Corrections pending trial
 local charges of manslaughter, robbery and burglary;

1 July 12, 1989, defendant and 14 other people were indicted in the District Court for
2 Conspiracy to distribute heroin. A copy of that indictment is attached hereto as
3 Exhibit 1;

4 July 13, 1989, the District Court issued a Writ of Habeas Corpus Ad Prosequendum
5 so that defendant could be brought into court for arraignment on federal charges;

6 September 13, 1989, defendant waived indictment and pled guilty to this offense
7 through an information.. A copy of the plea colloquy is attached hereto as Exhibit 2;

8 March 16, 1990, defendant was sentenced on this offense to 12 years incarceration,
9 and five years supervised release. Defendant never appealed;

10 March 19, 1990, defendant was returned to local custody, and the U.S. Marshals
11 Service filed a detainer against him;

12 September 20, 1990, defendant was sentenced in the Superior Court of Guam to
13 10 years incarceration following his convictions for manslaughter, robbery and
14 burglary;

15 April 21, 1999, defendant was released from the Guam Department of Corrections and
16 transferred to the Bureau of Prisons;

17 June 8, 2005, defendant requested that the Bureau of Prisons consider him for parole;

18 August 12, 2005, the warden of FCI Talladega denied his request for parole on the
19 grounds he was sentenced as a Sentence Reform Act inmate, and accordingly was
20 not eligible for parole;

21 September 7, 2005, defendant filed a Motion for Clarification of Sentence and
22 Amendment of Written Judgment concerning errors made in the judgment entered in
23 this case March 16, 1990. These errors related to whether defendant's offense of
24 conviction occurred prior the effective date of the Sentencing Guidelines, so that
25 he was improperly sentenced to serve five years supervised release. Defendant
26 also contended that he should have received credit against his federal sentence for
27 time served on the local case. His authority was FRCrP 36.

28 March 13, 2006, defendant filed a Motion under 28 U.S.C. § 2255 to vacate, set
29 aside or correct his sentence on the standard form provided for 2255 motions. He
30 listed three grounds in support of his motion:

- 31 1) his plea was obtained in violation of Due Process, citing Santobello v.
32 New York, 404 U.S. 257 (1971);
- 33 2) his plea was obtained in violation of Due Process, citing United States
34 v. Meyers, 451 F.2d 402 (9th Cir. 1972); and
- 35 3) the court erred in sentencing defendant pursuant to the Sentencing
36 Guidelines.

37 March 13, 2006, defendant filed a Motion to Amend and for Appointment of
38 Counsel, which added arguments related to the merits of his 2255 motion;

March 28, 2006, defendant filed a Motion to Amend and Motion for Appointment of Counsel with arguments related to the timeliness of his 2255 motion and a third ground for his 2255 petition, ineffective assistance of counsel.

ISSUES FOR REVIEW

On April 3, 2006, the Honorable Roger T. Benitez issued an order granting defendant's motions in part, based upon Federal Rules of Criminal Procedure 35 and 36. The court ordered his 1990 judgment amended in two respects: it redacted the language putting him on supervised release, and added the date of the offense to reflect 1987. A copy of the amended judgment is attached hereto as Exhibit 3.

The court also denied defendant's motion that he receive credit for time spent in custody serving his local sentence.

The court specifically reserved defendant's attack on the validity of his plea for subsequent proceedings pursuant to 28 U.S.C. § 2255. Thus, there are three 2255 claims presently before the court. First, defendant contends the government or court violated the terms of his guilty plea by failing to continue sentencing on his federal charge until after he had been sentenced on his local convictions. He asserts that had his federal sentencing been so continued, the district court judge would have had the discretion to run his sentences concurrently.

Second, the district court failed to advise him that his federal sentence could not run concurrently with the local, and affirmatively misled him by advising him that upon completion of the “trial” of his local matters, he would be turned over to the U.S. Marshals Service, causing defendant to believe that the sentences would be concurrent.

Third, his counsel was ineffective.

I. THE PETITION IS NOT TIMELY FILED.

28 U.S.C. § 2255 ¶ 6 limits the filing of habeas corpus claims to one year. This one-year time limitation runs from the latest of:

- “(1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.”

Defendant's 2255 claims all concern the fact that his federal sentence was consecutive to that of his local convictions. Yet defendant knew as of March 19, 1990, that this would be so. The U.S. Marshals detainer specifically advises that when "the subject is to be released from your custody, please notify this office at once so that we may assume custody if necessary."

If this was not enough, defendant certainly knew as of April 21, 1999, that his federal time was going to run consecutively to that served on the Guam charges, because he was transferred to a federal penitentiary. He acquiesced in this procedure, and did not initiate any action to contest his sentence until after his June 8, 2005, request for parole (Exhibit D of his September 7, 2005 Motion). Accordingly, defendant's petition should be denied because it was not filed within one year of the date on which the facts supporting his claim were discovered.

II. THE GOVERNMENT DID NOT BREACH THE PLEA AGREEMENT

Defendant contends that the plea agreement was unconstitutionally breached because the government did not continue sentencing "until after the trial of any associate involved." There were 14 other "associates" indicted with the defendant. Defendant appears to argue that had his sentencing date been extended until the disposition of all 14 other cases, his local charges would have been resolved, he would have already be serving his 10-year Guam sentence, so that the district court could have had the opportunity to run his sentence consecutively. The record is silent concerning the disposition of their cases with respect to his. This provision of the plea agreement was not breached by the government because it obviously concerns waiver of defendant's Speedy Trial rights in relation to the disposition of other federal prisoners. In addition, as Judge Benitez points out in his April 3, 2006, order at pages 5-6, however, former 18 U.S.C. § 3568 did not allow defendant's federal time to commence until he was "received by

federal authorities." Thus, it is irrelevant whether defendant was sentenced in District Court before or after disposition of his local charges.

II - DEFENDANT WAIVED HIS RIGHT TO COLLATERALLY ATTACK HIS CONVICTION

Defendant is correct in his second claim, that the court violated Federal Rule of Criminal Procedure 11 by failing to advise him that the federal sentence would run consecutively to whatever sentence he received for the Guam charges. United States v. Neely, 38 F.3d 458 (9th Cir. 1994). This is not the end of the inquiry, however, only the beginning. Such an error must cause prejudice. Defendant does not allege that if he had been properly advised, he would not have pled guilty. United States v. Timmreck, 441 U.S. 780 (1979).

This violation of Rule 11 could have been raised at sentencing or on direct appeal, but was not. McCarthy v. United States, 294 U.S. 459 (1969). Hence, defendant has procedurally defaulted on his claim. The Supreme Court has strictly limited the circumstances under which an individual can attack a guilty plea on collateral review. United States v. Bousley, 523 U.S. 614, 621 (1998). Defendant must demonstrate cause for failing to raise the issue on direct appeal, Murray v. Carrier, 477 U.S. 478 , 485 (1986), and that he has suffered actual prejudice, that he is “actually innocent.” Id. at 496.

Defendant has not made any claim that he is actually innocent of his heroin conviction, or of other criminal conduct charged in the initial indictment. The record reflects that the government dismissed several charges against defendant in favor of an information charging one count of distribution. “In cases where the Government has forgone more serious charges in the course of plea bargaining, petitioner’s showing of actual innocence must also extend to those charges.” Bousley, 523 U.S. 624.

For the reasons stated above, defendant's claim of ineffective assistance of counsel must also be rejected.

3 Respectfully submitted this 24th day of August, 2006.

4 LEONARDO M. RAPADAS
5 United States Attorney
Districts of Guam and NMI

By:

Karon V Johnson
KARON V. JOHNSON
Assistant U.S. Attorney

0079F

1 K. WILLIAM O'CONNOR
2 United States Attorney
3 FREDERICK A. BLACK
4 Assistant U.S. Attorney
5 Suite 502-A, PDN Building
6 238 O'Hara Street
7 Agana, Guam 96910
8 Telephone: 472-7332/7283

9 Attorneys for United States of America

FILED

Office of the Clerk
DISTRICT COURT OF GUAM
AGANA, GUAM

JUL 1 21989

(3)
MARY L. MICHELS
Clerk of Court

7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE TERRITORY OF GUAM
9

10 UNITED STATES OF AMERICA,

CRIMINAL CASE NO. 89-00050

11 Plaintiff,

SUPERCEDING INDICTMENT

12 vs.
13 MELWART TMETUCHL,
14 FRANCISCO ASANUMA aka "FRANK"
aka "KAZOO",
15 LOURDES JUALO AFABLE,
ANTONIO AGUON aka "ANTON",
ANTONIO ALFORQUE,
ELINO ATAD,
HOKKON BAULES,
PETER SAN NICOLAS BAZA
aka "SMACK",
ROMEO BENIN,
ALFONSO BORJA aka "REHEBONG",
JOSEPH B. CAMACHO,
EVELYN CRUZ,
JOHN CRUZ aka JUAN SALAS CRUZ
aka "KALASKAS",
OLSINGCH IYEKAR,
JULIO KAZUO,
EDDIE LUJAN,
LILY MABEL aka LILY "IYEKAR",
LONNIE MANACMUL,
JOHN G. MANIBUSAN,
JOSEPH AFLAGUE MANIBUSAN aka
"PING ROY",
ROBERT MANIBUSAN aka "ALVIN"
MANIBUSAN aka "ALBING",
ANTONIO MARIUR aka "ANTON BORJA",

Conspiracy to Distribute Heroin
[21 U.S.C. § 846 and § 841(a)(1)]
Conspiracy to Import Heroin
[21 U.S.C. § 952(a), § 960 and
§ 963]
Conspiracy to Distribute Marihuana
[21 U.S.C. § 846 and § 841(a)(1)]
Conspiracy to Import Marihuana
[21 U.S.C. § 952(a), § 960 and
§ 963]
Distribution and Possession
with Intent to Distribute Heroin
[21 U.S.C. § 841(a)(1) and
18 U.S.C. § 2]
Importation of Heroin
[21 U.S.C. § 952(a) and § 960]
Unlawful Use of a Firearm
[18 U.S.C. § 924(c)]
Continuing Criminal Enterprise
[21 U.S.C. § 848]

1 ESTHER MARIUR aka ESTHER BORJA)
2 aka "ESTHER PALAU" aka)
2 BALERIA BORJA aka ESTER LUJAN,)
3 ALEX MESA,)
3 PEDRO MESA,)
4 SIDNEY MOBEL,)
4 JOHN NAHOLOWAA,)
5 ALEX NGIRAINGAS,)
5 ROSETTY M. NGIRAINGAS,)
6 SAMUEL NGIROS,)
6 AGGIE OKADA,)
7 DOROTHY OKADA aka DOT,)
7 CARSON OLKERIIL,)
8 DANNY PANGELINAN,)
8 JOSEPH PANGELINAN,)
9 MARTHA PANGELINAN,)
9 WILLIAM PANGELINAN)
9 aka "BILLY JACK" aka "BILL")
10 CLARENCE POLL,)
10 ANGHENIO SABINO)
11 aka ANZELIO SABINO,)
11 RICHARD SADANG)
12 aka "RICHARD SILMAI",)
12 NOBUYA SUGIYAMA,)
13 JOHN TEVID,)
13 LESLIE TEWID,)
14 DANIEL TURNER,)
14 MARTIN VILORIA, and)
15 YONG YALLAP aka BEN HART,)
16 Defendants.)
16)
17

18 THE GRAND JURY CHARGES:

19 CONSPIRACY TO DISTRIBUTE HEROIN

20 COUNT 1

22 Violation of Title 21, United States Code, Section 846, to wit:

23 Beginning on or about January 1, 1984, the exact date being unknown to the
24 Grand Jury and continuously thereafter, up to and including the date of this
25 indictment,

1 MELWART TMETUCHL,
2 FRANCISCO ASANUMA aka "FRANK"
3 aka "KAZUO",
4 LOURDES JUALO AFABLE,
5 ANTONIO AGUON aka "ANTON",
6 ANTONIO ALFORQUE,
7 ELINO ATAD,
8 HOKKON BAULES,
9 PETER SAN NICOLAS BAZA
10 aka "SMACK",
11 ROMEO BENIN,
12 ALFONSO BORJA aka "REHEBONG",
13 JOSEPH B. CAMACHO,
14 EVELYN CRUZ,
15 JOHN CRUZ aka JUAN SALAS CRUZ
16 aka "KALASKAS",
17 OLSINGCH IYEKAR,
18 JULIO KAZUO,
19 EDDIE LUJAN,
20 LONNIE MANACMUL,
21 JOHN G. MANIBUSAN,
22 JOSEPH AFLAGUE MANIBUSAN aka,
23 "PING ROY",
24 ROBERT MANIBUSAN aka "ALVIN"
25 MANIBUSAN aka "ALBING",
26 ANTONIO MARIUR aka "ANTON BORJA",
ESTHER MARIUR aka ESTHER BORJA
aka "ESTHER PALAU" aka
BALERIA BORJA aka ESTER LUJAN,
ALEX MESA
PEDRO MESA,
SIDNEY MOBEL,
JOHN NAHOLLOWAA,
ALEX NGIRAIANGAS,
ROSETTY M. NGIRAIANGAS,
SAMUEL NGIROS,
AGGIE OKADA,
DOROTHY OKADA aka DOT,
CARSON OLKERIIL,
DANNY PANGELINAN,
JOSEPH PANGELINAN,
MARTHA PANGELINAN,
WILLIAM PANGELINAN
aka "BILLY JACK" aka "BILL"
CLARENCE POLLIS,
ANGHENIO SABINO
aka ANZELIO SABINO,
RICHARD SADANG
aka "RICHARD SILMAI",
NOBUYA SUGIYAMA,
JOHN TEVID,
LESLIE TEWID,
DANIEL TURNER,
MARTIN VILORIA, and
YONG YALLAP aka BEN HART,

16
17 the defendants herein, and other unindicted co-conspirators both known and
18 unknown to the Grand Jury, did unlawfully, knowingly, willfully and
19 intentionally combine, conspire, confederate and agree together in the
20 District of Guam, Palau and elsewhere, to distribute heroin, a Schedule I
21 narcotic controlled substance, all in violation of Title 21, United States
22 Code, Sections 841(a)(1) and 846.

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1 Objects of the Conspiracy

2 The objects of said conspiracy were accomplished as follows:

3 1. The defendants would obtain heroin from unknown co-conspirators
4 from Thailand, the Philippines and elsewhere in Asia and import it into Palau
5 and into Guam.

6 2. After the heroin arrived in Palau and Guam the defendants and other
7 unindicted co-conspirators would arrange for its distribution. The various
8 distributors would share the heroin with each other, so that in the event that
9 the heroin supply was low for one distributor, he or she would be able to
10 obtain it from another drug associate.

11 3. In order to accomplish this objective and to conceal their illegal
12 activities the defendants would at times use coded language to conceal the
13 true content of their drug related conversations.

14 4. To assure the objects of the conspiracy and to encourage the prompt
15 payment of heroin debts and to discourage any cooperation with law enforcement
16 officials, the defendants would arrange to assault, intimidate or murder
17 individuals thought to be cooperating with law enforcement officials and
18 individuals who were failing to pay off their heroin debts.

19 5. In order to afford the heroin related expenses, robberies and
20 burglaries were conducted, firearms were traded for heroin and marihuana
21 profits were reinvested to purchase heroin. The protection of the heroin
22 distribution system required the display of firearms and at times the use of
23 firearms by trusted co-conspirators who acted in the capacity of guards for
24 the distributors.

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Overt Acts

In furtherance of the conspiracy and to effect the objects thereof, the defendants and others performed the following overt acts, among others:

1. In each of the years between and including 1984 through 1989, the defendants arranged for the importation of heroin into Guam and Palau from Thailand, the Philippines and other parts of Asia.

2. In each of the years between and including 1984 through 1989, the defendants arranged for the distribution of heroin on Guam and in Palau.

3. In each of the years between and including 1984 through 1989, the defendants obtained funding for heroin from various burglaries, robberies and murders. The defendants traded firearms for marihuana and heroin; marihuana profits were used to maintain the supply of heroin.

4. At various times in 1987, MELWERT TMETUCHUL used Lourdes Afable to bring multiple ounces of heroin from Manila to Palau for subsequent transport to Guam.

5. At various times in 1987 and 1988, ANTONIO ALFORQUE distributed heroin on Guam. To serve the ends of the conspiracy, ANTONIO ALFORQUE carried a firearm from Guam to Palau on behalf of Sidney Mobel.

6. At various times during the conspiracy, FRANCISCO ASANUMA aka "KAZUO" aka "FRANK" possessed, with intent to distribute, pound quantities of heroin.

7. At various times between and including 1986 through 1988,
FRANK ASANUMA agreed with others to import multiple pound quantities of heroin
from Palau into Guam and to other parts of the United States.

11

11

1 8. In early 1986, FRANK ASANUMA arranged to send a sample of marihuana
2 into the United States via Guam from Palau using the United States mails.

3 9. On or about in March 1987, FRANCISCO ASANUMA utilized the United
4 States mail to import a sample bindle of heroin into the United States via
5 Guam from Palau.

6 10. At various times during the conspiracy, FRANK ASANUMA and
7 HOKKON BAULES possessed with intent to distribute multiple quantities of
8 marihuana cigarettes aka "joints" and arranged for the transport of marihuana
9 plants.

10 11. At various times during the conspiracy, FRANK ASANUMA used
11 Yong Yallap to distribute heroin on Palau.

12 12. At various in 1986 and 1987, JOHN and EVELYN CRUZ and ELINO ATAD
13 arranged to bring heroin into Guam from Palau.

14 13. In 1988, ELINO ATAD made plans to import heroin into Guam from the
15 Philippines.

16 14. In early 1987, HOKKON BAULES arranged to bring multiple ounce
17 quantities of heroin from the Philippines into Palau.

18 15. At various times during 1985 through 1988, PETER SAN NICOLAS BAZA
19 aka "SMACK" distributed heroin on Guam.

20 16. At various times in 1987, ROMEO BENIN assisted in the distribution
21 of heroin on Guam.

22 17. At various times in 1987, ALFONSO BORJA aka "REHEBONG" distributed
23 heroin and marihuana on Guam. ALFONSO BORJA also assisted the co-conspirators
24 to locate firearms to be sent to Palau in exchange for heroin.

25 18. At various times in 1987, JOSEPH CAMACHO assisted in the
26 distribution of heroin on Guam.

1 19. On or about in January 1983, OLSINGCH IYEKAR distributed marihuana
2 on Guam.

3 20. On or about in June 1984, OLSINGCH IYEKAR made plans to import
4 heroin into Guam from Palau.

5 21. At various times between and including June and August 1984,
6 OLISINGCH IYEKAR and RICHARD SADANG aka "RICHARD SILMAI" traveled to Bangkok,
7 Thailand and arranged for the importation of heroin into Palau. At various
8 times in late 1984 and 1985, OLSINGCH IYEKAR and RICHARD SADANG distributed
9 heroin on Palau.

10 22. On or about in November 1984, OLSINGCH IYEKAR arranged for the
11 importation of marihuana from Palau into Guam.

12 23. In about the year 1985, OLSINGCH IYEKAR and RICHARD SADANG aka
13 "RICHARD SILMAI" distributed heroin on Palau.

14 24. On or about the year 1987, OLSINGCH IYEKAR arranged for the
15 importation of multiple ounce quantities of heroin and multiple pound
16 quantities of marihuana from Palau into Guam.

17 25. At various times in 1987, JULIO KAZUO distributed ounce quantities
18 of heroin on Guam and arranged for the importation of pound quantities of
19 marihuana.

20 26. At various times in 1987 on Guam, EDDIE LUJAN assisted in the
21 distribution of heroin that Esther "Borja" Mariur received from her brother
22 Anton "Borja" Mariur.

23 27. On or about in December 1987, LILY MABEL aided and abetted
24 Olisingch Iyekar in the importation of multiple pound quantities of marihuana
25 from Palau into Guam.

26 //

1 28. At various times in 1987, LONNIE MANACMUL distributed heroin on
2 Guam.

3 29. At various times during the conspiracy, ANTON "BORJA" MARIUR
4 purchased heroin from Melwart Tmetuchl in multiple ounce quantities and
5 imported this heroin from Palau into Guam for distribution on Guam through
6 various members of the conspiracy. One unindicted co-conspirator, Joseph
7 Manibusan aka "Cabajo", assisted in the distribution of this heroin.

8 30. Pursuant to the conspiracy, Parnel Lujan was murdered on
9 October 8, 1986 and Antonio Chargualaf was murdered on January 17, 1987, by
10 co-conspirators Joseph Manibusan, Daniel Turner, Martin Viloria,
11 Robert Manibusan and others because the co-conspirators believed the victims
12 were government informants.

13 31. On November 8, 1986, pursuant to the conspiracy, in order to
14 obtain money to purchase heroin, and for related reasons, Carlo Bossi and
15 Maria Tanaka were robbed and murdered by Daniel Turner, Martin Viloria,
16 John Manibusan and Dino Olandez. Co-conspirators John Naholowaa and
17 Robert Manibusan assisted in the destruction of the evidence and in providing
18 an escape route.

19 32. At various times throughout the conspiracy, John Naholowaa,
20 Daniel Turner and Martin Viloria acted as guards and carried firearms to
21 protect the distribution of heroin.

22 33. At various times throughout the conspiracy, ANTONIO AGUON aka
23 "ANTON" assisted in the distribution of heroin and marihuana on Guam.

24 34. At various times in 1987 and 1988, JOSEPH AFLAGUE MANIBUSAN aka
25 "PING ROY" assisted Sidney Mobel, Alfonso Borja, Anton Borja Mariur and other
26 co-conspirators in the distribution of heroin on Guam.

1 35. At various times throughout the conspiracy, JOHN and
2 ROBERT MANIBUSAN, together with Martin Viloria, Daniel Turner, John Naholowaa
3 and Antonio Aguon and other co-conspirators assisted in the distribution of
4 heroin on Guam.

5 36. At various times in and including 1986 through 1988, ESTHER BORJA
6 MARIUR aka "ESTHER PALAU" aka ESTER LUJAN aka BALERIA BORJA assisted her
7 brother Anton Borja Mariur in bringing heroin into Guam from Palau and in its
8 subsequent distribution on Guam.

9 37. At various times in 1986 and 1987, ALEX MESA distributed heroin he
10 received from William Pangelinan aka "Bill" aka "Billy Jack" as well as from
11 Bill's brother, Danny Pangelinan.

12 38. At various times in 1987, PEDRO MESA distributed heroin he
13 received from Alex Ngiraingas.

14 39. At various times throughout the conspiracy, SIDNEY MOBEL arranged
15 for the importation of heroin from Palau into Guam for subsequent distribution
16 on Guam. SIDNEY MOBEL used many of the co-conspirators such as John Tevid,
17 Bill and Danny Pangelinan, Antonio Aguon, Antonio Alforque, "Ping Roy"
18 Manibusan and Joseph Manibusan aka "Cabajo" and others to assist in these
19 transactions.

20 40. At various times throughout the conspiracy ALEX NGIRAIINGAS sold
21 marihuana and heroin on Guam. Rosetty M. Ngiraingas, the wife of
22 ALEX NGIRAIINGAS, assisted in the distribution of heroin on Guam.

23 41. At various times in 1985 on Palau, SAMUEL NGIROS assisted
24 FRANK ASANUMA in the acquisition of heroin.

25 42. At various times in 1986 and 1987, AGGIE OKADA and DOROTHY OKADA
26 aka "DOT" assisted Anton Borja Mariur in the distribution of heroin on Guam.

1 43. At various times throughout the conspiracy CARSON OLKERIIL
2 distributed marihuana and heroin on Guam.

3 44. At various times during the conspiracy DANNY, WILLIAM, JOSEPH and
4 MARTHAPANGELINAN distributed heroin on Guam.

5 45. At various times in 1986 and 1987, CLARENCE POLLI imported heroin
6 from Palau to Guam and distributed heroin on Guam.

7 46. At various times in 1988, ANGHENIO SABINO aka ANZELIO SABINO
8 assisted Melwart Tmetuchl in heroin distributions on Palau and in the planned
9 shipment of heroin.

10 47. At various times throughout the conspiracy, JOHN TEVID assisted in
11 the importation into Guam and subsequent distribution of heroin and marihuana.

12 48. At various times throughout the conspiracy, LESLIE TEWID assisted
13 Melwart Tmetuchl in the distribution of heroin.

14 49. At various times throughout the conspiracy, MELWART TMETUCHL
15 possessed kilo quantities of heroin which he distributed on Palau and which he
16 exported into Guam with Anton Borja Mariur, Sidney Mobel and other
17 co-conspirators he supervised in a series of heroin transactions.

CONSPIRACY TO IMPORT HEROIN

COUNT 2

23 Violation of Title 21, United States Code, Section 963, to wit: From
24 on or about January 1, 1984, the exact date being unknown to the Grand Jury
25 and continuously thereafter, up to and including the date of this indictment.

26 //

1 MELWART TMETUCHL,
2 FRANCISCO ASANUMA aka "FRANK"
3 aka "KAZUO",
4 LOURDES JUALO AFABLE,
5 HOKKON BAULES,
6 PETER SAN NICOLAS BAZA
7 aka "SMACK",
8 ALFONSO BORJA aka "REHEBONG",
9 JOSEPH B. CAMACHO,
EVELYN CRUZ,
JOHN CRUZ aka JUAN SALAS CRUZ
aka "KALASKAS",
OLSINGCH IYEKAR,
JULIO KAZUO,
JOSEPH AFLAGUE MANIBUSAN aka
"PING ROY",
ANTONIO MARIUR aka "ANTON BORJA",

ESTHER MARIUR aka ESTHER BORJA
aka "ESTHER PALAU" aka
BALERIA BORJA aka ESTER LUJAN,
SIDNEY MOBEL,
ALEX NGIRAIINGAS,
SAMUEL NGIROS,
DOROTHY OKADA aka DOT,
CARSON OLKERIIL,
CLARENCE POLLI,
ANGHENIO SABINO
aka ANZELIO SABINO,
RICHARD SADANG
aka "RICHARD SILMAI",
NOBUYA SUGIYAMA,
JOHN TEVID,
LESLIE TEWID, and
YONG YALLAP aka BEN HART,

10
11 defendants herein, and unindicted co-conspirators both known and unknown to
12 the Grand Jury, did unlawfully, knowingly, willfully and intentionally
13 combine, conspire, confederate and agree together in the District of Guam and
14 elsewhere, to import heroin, a Schedule I narcotic controlled substance, into
15 the United States from a place outside thereof, in violation of Title 21,
16 United States Code, Sections 952(a), 960 and 963.

17
18 Objects of the Conspiracy and Overt Acts

19 In furtherance of the conspiracy and to effect the objects thereof, the
20 defendants and others performed, among others, all of the overt acts set forth
21 in Count I of this Indictment, which objects and overt acts are hereby
22 realleged and incorporated herein by reference.

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1 CONSPIRACY TO DISTRIBUTE MARIHUANA
2 COUNT 3
3

4 Violation of Title 21, United States Code, Section 846, to wit:

5 Beginning on or about January 1, 1984, the exact date being unknown to the
6 Grand Jury and continuously thereafter, up to and including the date of this
7 indictment,

8
9 MELWART TMETUCHL
10 FRANCISCO ASANUMA aka "FRANK"
aka "KAZUO",
11 ANTONIO AGUON aka "ANTON",
ELINO ATAD,
HOKKON BAULES,
12 ALFONSO BORJA aka "REHEBONG",
OLSINGCH IYEKAR,
13

JULIO KAZUO,
LILY MABEL aka LILY IYEKAR",
SIDNEY MOBEL,
ALEX NGIRAINHAS,
CARSON OLKERIIL,
NOBUYA SUGIYAMA, and
JOHN TEVID,

14
15 the defendants herein, and other unindicted co-conspirators both known and
16 unknown to the Grand Jury, did unlawfully, knowingly, willfully and
intentionally combine, conspire, confederate and agree together in the
17 District of Guam, Palau and elsewhere, to distribute marihuana, a Schedule I
18 narcotic controlled substance, all in violation of Title 21, United States
19 Code, Sections 841(a)(1) and 846.
20

21
22 Objects of the Conspiracy and Overt Acts

23 In furtherance of the conspiracy and to effect the objects thereof, the
24 defendants and others performed, among others, all of the overt acts set forth
25 in Count I of this Indictment, which objects and overt acts are hereby
26 realleged and incorporated herein by reference.

1 CONSPIRACY TO IMPORT MARIHUANA

2 COUNT 4

3
4 Violation of Title 21, United States Code, Section 963, to wit: From
5 on or about January 1, 1984, the exact date being unknown to the Grand Jury
6 and continuously thereafter, up to and including the date of the Indictment,

7
8
9 MELWART TMETUCHL
10 FRANCISCO ASANUMA aka "FRANK"
11 aka "KAZUO",
12 ALFONSO BORJA aka "REHEBONG",
13 OLSINGCH IYEKAR,
14 JULIO KAZUO,

15 LILY MABEL aka LILY IYEKAR",
16 SIDNEY MOBEL,
17 ALEX NGIRAIANGAS,
18 CARSON OLKERIIL,
19 NOBUYA SUGIYAMA, and
20 JOHN TEVID,

21 defendants herein, and unindicted co-conspirators both known and unknown to
22 the Grand Jury, did unlawfully, knowingly, willfully and intentionally
23 combine, conspire, confederate and agree together in the District of Guam and
24 elsewhere, to import marihuana, a Schedule I narcotic controlled substance,
25 into the United States from a place outside thereof, in violation of Title 21,
26 United States Code, Sections 952(a), 960 and 963.

27
28 Objects of the Conspiracy and Overt Acts

29 In furtherance of the conspiracy and to effect the objects thereof, the
30 defendants and others performed, among others, all of the overt acts set forth
31 in Count I of this Indictment, which objects and overt acts are hereby
32 realleged and incorporated herein by reference.

33 //

34 //

1 CONTINUING CRIMINAL ENTERPRISE

2 COUNT 5

3

4 Violation of Title 21, United States Code, Section 848(a), to wit:

5 Beginning on or about January 1 of 1985, the exact date being unknown to the

6 Grand Jury and continuing until the time of this Indictment in the District of

7 Guam, Palau and elsewhere, the defendant MELWART TMETUCHL, unlawfully,

8 knowingly, willfully and intentionally violated Title 21, United States Code,

9 Sections 952, 960 and 841 by doing and causing the importation of heroin into

10 the United States from a place outside thereof, and by doing and causing the

11 distribution of heroin as alleged, in part, in Counts 1 through 2 of the

12 Indictment, which counts are incorporated herein by reference, which

13 violations were part of a continuing series of violations of the above

14 narcotic offenses undertaken by MELWART TMETUCHL, in concert with at least

15 five other persons with respect to whom defendant MELWART TMETUCHL, occupied a

16 position of organizer, a supervisor and manager, and from which defendant

17 MELWART TMETUCHL obtained substantial income and resources.

18

19 Forfeiture

20 Upon conviction of defendant MELWART TMETUCHL as set forth in the

21 foregoing (Count 5), the United States is entitled to forfeiture of, and the

22 defendant shall forfeit to the United States, pursuant to Title 21, United

23 States Code, Sections 848 and 853, all profits and proceeds of profits

24 obtained by him in such enterprise, his interest in, claim against, and any

25 and all property and contractual rights of any kind affording a source of

26 //

1 influence over such enterprise and any property used, or intended to be used,
2 in any manner or part, to commit or to facilitate the commission of such
3 violation.

4

5 SUBSTANTIVE DISTRIBUTION AND POSSESSION
6 WITH INTENT TO DISTRIBUTE COUNTS 6-19

7

COUNT 6

8

9 On or about July 17, 1987, in the District of Guam, JOSEPH B. CAMACHO,
10 the defendant herein, did unlawfully, knowingly, willfully and intentionally
11 distribute one cap of heroin, a Schedule I narcotic controlled substance, in
12 violation of Title 21, United States Code, Section 841(a)(1) and Title 18,
13 United States Code, Section 2.

14

15

COUNT 7

16

17 On or about October 15, 1987, in the District of Guam, JOSEPH B.
18 CAMACHO, the defendant herein, did unlawfully, knowingly, willfully and
19 intentionally distribute three bindles of heroin, a Schedule I
20 narcotic controlled substance, in violation of Title 21, United States Code,
21 Section 841(a)(1) and Title 18, United States Code, Section 2.

22

23

COUNT 8

24

25

26 On or about October 16, 1987, in the District of Guam, JOSEPH B.
CAMACHO, the defendant herein, did unlawfully, knowingly, willfully and

1 intentionally distribute one cap of heroin, a Schedule I narcotic controlled
2 substance, in violation of Title 21, United States Code, Section 841(a)(1) and
3 Title 18, United States Code, Section 2.

4

5 COUNT 9

6

7 On or about October 20, 1987, in the District of Guam, JOSEPH B.
8 CAMACHO, the defendant herein, did unlawfully, knowingly, willfully and
9 intentionally distribute one cap of heroin, a Schedule I narcotic controlled
10 substance, in violation of Title 21, United States Code, Section 841(a)(1) and
11 Title 18, United States Code, Section 2.

12

13 COUNT 10

14

15 On or about November 11, 1987, in the District of Guam, JOSEPH B.
16 CAMACHO, the defendant herein, did unlawfully, knowingly, willfully and
17 intentionally distribute 11 bindles of heroin, a Schedule I narcotic
18 controlled substance, in violation of Title 21, United States Code,
19 Section 841(a)(1) and Title 18, United States Code, Section 2.

20

21 COUNT 11

22

23 On or about July 5, 1987, in the District of Guam, JUAN SALAS CRUZ aka
24 "JOHN" aka "KALASKAS", the defendant herein, did unlawfully, knowingly,
25 willfully and intentionally possess with intent to distribute 17 bindles of
26 heroin, a Schedule I narcotic controlled substance, in violation of Title 21,

1 United States Code, Section 841(a)(1) and Title 18, United States Code,
2 Section 2.

3

4 COUNT 12

5

6 On or about March 15, 1988, in the District of Guam, JOSEPH AFLAGUE
7 MANIBUSAN aka "PING ROY", the defendant herein, did unlawfully, knowingly,
8 willfully and intentionally distribute 3 bindles of heroin, a Schedule I
9 narcotic controlled substance, in violation of Title 21, United States Code,
10 Section 841(a)(1) and Title 18, United States Code, Section 2.

11

12 COUNT 13

13

14 On or about May 18, 1987, in the District of Guam, EDDIE LUJAN, the
15 defendant herein, did unlawfully, knowingly, willfully and intentionally
16 distribute 3 bindles of heroin, a Schedule I narcotic controlled substance, in
17 violation of Title 21, United States Code, Section 841(a)(1) and Title 18,
18 United States Code, Section 2.

19

20 COUNT 14

21

22 On or about May 28, 1987, in the District of Guam, EDDIE LUJAN, the
23 defendant herein, did unlawfully, knowingly, willfully and intentionally
24 distribute 5 bindles of heroin, a Schedule I narcotic controlled substance, in
25 violation of Title 21, United States Code, Section 841(a)(1) and Title 18,
26 United States Code, Section 2.

COUNT 15

On or about May 29, 1987, in the District of Guam, EDDIE LUJAN, the defendant herein, did unlawfully, knowingly, willfully and intentionally distribute 5 bindles of heroin, a Schedule I narcotic controlled substance, in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

COUNT 16

On or about December 9, 1987, in the District of Guam, ROSETTY M. NGIRAINIGAS, the defendant herein, did unlawfully, knowingly, willfully and intentionally distribute two caps of heroin, a Schedule I narcotic controlled substance, in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

COUNT 17

On or about December 9, 1987, in the District of Guam, ROSETTY M. NGIRAINANGAS and ALEX NGIRAINANGAS, the defendants herein, did unlawfully, knowingly, willfully and intentionally possess with intent to distribute 8 caps of heroin, a Schedule I narcotic controlled substance, in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

11

11

1

COUNT 18

2

3 On or about May 12, 1987, in the District of Guam, JOHN TEVID, the
4 defendant herein, did unlawfully, knowingly, willfully and intentionally
5 distribute two ounces of marihuana, a Schedule I narcotic controlled
6 substance, in violation of Title 21, United States Code, Section 841(a)(1) and
7 Title 18, United States Code, Section 2.

8

9

COUNT 19

10

11 On or about August 21, 1987, in the District of Guam, NORBUYA SUGIYAMA,
12 the defendant herein, did unlawfully, knowingly, willfully and intentionally
13 possess with intent to distribute approximately six caps of heroin, a
14 Schedule I narcotic controlled substance, in violation of Title 21, United
15 States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

16

17

SUBSTANTIVE IMPORTATION COUNTS 20-24

18

COUNT 20

19

20

21 On or about March 10, 1987, in the District of Guam, and elsewhere,
22 FRANCISCO ASANUMA, the defendant herein, did unlawfully, knowingly, willfully
23 and intentionally cause to be imported into the United States, from a place
24 outside thereof, one bindle of heroin, a Schedule I controlled substance, in
25 violation of Title 21, United States Code, Sections 952, 960, 963 and
26 Title 18, United States Code, Section 2.

27 //

1 COUNT 21

2
3 On or about April 29, 1987, in the District of Guam, and elsewhere,
4 MELWART TMETUCHL, the defendant herein, did unlawfully, knowingly, willfully
5 and intentionally cause to be imported into the United States, from a place
6 outside thereof, five ounces of heroin, a Schedule I controlled substance, in
7 violation of Title 21, United States Code, Sections 952, 960, 963 and
8 Title 18, United States Code, Section 2.

9
10 COUNT 22

11
12 On or about November 23, 1984, in the District of Guam, and elsewhere,
13 OLSINGCH IYEKAR, the defendant herein, did unlawfully, knowingly, willfully
14 and intentionally cause to be imported into the United States, from a place
15 outside thereof, multiple kilo quantities of marihuana, a Schedule I
16 controlled substance, in violation of Title 21, United States Code,
17 Sections 952, 960, 963 and Title 18, United States Code, Section 2.

18
19 COUNT 23

20
21 On or about December 13, 1987, in the District of Guam, and elsewhere,
22 OLSINGCH IYEKAR and LILY MABEL aka LILY "IYEKAR", the defendants herein, did
23 unlawfully, knowingly, willfully and intentionally cause to be imported into
24 the United States, from a place outside thereof, 33 kilos of marihuana, a
25 Schedule I controlled substance, in violation of Title 21, United States Code,
26 Sections 952, 960, 963 and Title 18, United States Code, Section 2.

1

COUNT 24

2

3 On or about August 2, 1986, in the District of Guam, and elsewhere,
4 JOHN TEVID, the defendant herein, did unlawfully, knowingly, willfully and
5 intentionally cause to be imported into the United States, from a place
6 outside thereof, 15 kilos of marihuana, a Schedule I controlled substance, in
7 violation of Title 21, United States Code, Sections 952, 960, 963 and
8 Title 18, United States Code, Section 2.

9

FIREARMS COUNTS 25-29

10

COUNT 25

11

12

13 On or about July 5, 1987, and during the course of the conspiracy to
14 distribute heroin set forth in Court 1 of the Indictment, which is
15 incorporated herein by reference, in the District of Guam, JUAN SALAS CRUZ aka
16 "JOHN" aka "KALASKAS", did carry a firearm to commit the offense of conspiracy
17 to distribute heroin, a felony prosecutable in a court of the United States,
18 in violation of Title 18, United States Code, Section 924(c).

19

20

COUNT 26

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1 felony prosecutable in a court of the United States, in violation of Title 18,
2 United States Code, Section 924(c).

COUNT 27

At various times between December of 1986 and the year 1989, and during
the course of the conspiracy to distribute heroin set forth in Court 1 of the
Indictment, which is incorporated herein by reference, in the District of
Guam, JOHN NAHOLOWAA, did carry a firearm to commit the offense of conspiracy
to distribute heroin, a felony prosecutable in a court of the United States,
in violation of Title 18, United States Code, Section 924(c).

COUNT 28

15 At various times between December of 1986 and the year 1989, and during
16 the course of the conspiracy to distribute heroin set forth in Court 1 of the
17 Indictment, which is incorporated herein by reference, in the District of
18 Guam, MARTIN VILORIA, did carry a firearm to commit the offense of conspiracy
19 to distribute heroin, a felony prosecutable in a court of the United States,
20 in violation of Title 18, United States Code, Section 924(c).

COUNT 29

24 At various times between and including December of 1986 and 1989, and
25 during the course of the conspiracy to distribute heroin set forth in Count 1
26 //

1 of the Indictment, which is incorporated herein by reference, in the District
2 of Guam, JOHN G. MANIBUSAN, did carry a firearm to commit the offense of
3 conspiracy to distribute heroin, a felony prosecutable in a court of the
4 United States, in violation of Title 18, United States Code, Section 924(c).
5

6 DATED this 12th day of July, 1989.
7

8 A TRUE BILL:
9

10 Luisa A. Baza-Cruz
11 FOREPERSON

12 K. WILLIAM O'CONNOR
13 United States Attorney
District of Guam

14 By: Frederick A. Black
15 FREDERICK A. BLACK
16 Assistant U.S. Attorney
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4 DISTRICTS OF GUAM & NMI

5 IN THE DISTRICT COURT OF GUAM
6 NOV 23 2005 TERRITORY OF GUAM

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* * *

UNITED STATES OF AMERICA,) COURT OF APPEALS
Plaintiff,) CASE NO.
vs.)
JOHN G. MANIBUSAN,)
Defendant.)
-----)

TRANSCRIPT OF PROCEEDINGS

BEFORE

THE HONORABLE CRISTOBAL C. DUEÑAS
Senior District Judge

WAIVER OF INDICTMENT, FILING OF INFORMATION & PLEA
WEDNESDAY, SEPTEMBER 13, 1989

Wanda M. Miles
Official Court Reporter
District Court of Guam

1 APPEARANCES:

2

3 FOR THE PLAINTIFF:

4 UNITED STATES ATTORNEY

5 BY: FREDERICK A. BLACK, Esq.

6 Assistant United States Attorney

Fifth Floor, PDN Building

6 238 Archbishop Flores Street

Agana, Guam 96910

7

8

9 FOR THE DEFENDANT:

10 MICHAEL F. PHILLIPS, ESQ.

11 Attorney at Law

Suite 215, Union Bank Building

12 Agana, Guam 96910

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Wanda M. Miles
Official Court Reporter
District Court of Guam

1 AGANA, GUAM; WEDNESDAY, SEPTEMBER 13, 1989; 10:01 A.M.
2

* * *

3 THE COURT: Order of business.

4 THE CLERK: If Your Honor please, this is
5 Criminal Case 89-00104, United States of America versus
6 John G. Manibusan, coming up for waiver of indictment,
7 filing of information, and entry of plea.

8 THE COURT: Are you John G. Manibusan?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Mr. Manibusan, you are being
11 represented by Mr. Phillips; is that correct?

12 THE DEFENDANT: Yes. Yes, Your Honor.

13 THE COURT: Before we proceed, the clerk will
14 administer the oath to the defendant.

15 JOHN G. MANIBUSAN,
16 the defendant herein, was first duly sworn and
17 testified as follows:

18 EXAMINATION

19 BY THE COURT:

20 Q. Mr. Manibusan, you have taken the oath. That
21 means that you are now required to answer all of the
22 court's questions truthfully; in other words, you have
23 to tell the truth. If you give a false answer, you may
24 be subjecting yourself to the penalty of perjury, which
25 is a felony. Do you understand that?

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District Court of Guam

1 A. Yes, Your Honor.

2 Q. If you do not understand the court's question,
3 let the court know about it and the court can try to
4 simplify the question. You understand that?

5 A. I understand, Your Honor.

6 Q. Also feel free to consult with your counsel at
7 any time of the proceeding if you deem it necessary.
8 Do you understand that?

9 A. Yes.

10 Q. How old are you, Mr. Manibusan?

11 A. I'm 30 years old.

12 Q. 30 years old. And as to the extent of your
13 education?

14 A. I finish school in Hawaii Job Corps.

15 Q. In Hawaii?

16 A. Yes, Your Honor.

17 Q. Did you have the equivalent of a high school
18 education?

19 A. Yes, Your Honor, 12th grade.

20 Q. 12th grade. Are you currently under the care
21 of a physician or a psychiatrist?

22 A. No, Your Honor.

23 Q. Have you ever been hospitalized or treated for
24 narcotic addiction?

25 A. No, Your Honor.

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1 Q. Are you presently on medication?

2 A. No, Your Honor.

3 Q. Have you been furnished with a copy of the
4 information containing the charge against you?

5 A. Yes, Your Honor.

6 Q. Very well. The charge in the information has
7 to do with a violation of Section 841(a)(1) of Title 21
8 of the United States Code, that is, possession with
9 intent to distribute heroin. And the information
10 charges that on or about early part of 1987, here in
11 Guam, you the defendant did unlawfully, knowingly,
12 willfully and intentionally possessed with intent to
13 distribute less than 100 grams of heroin, which is a
14 Schedule I Narcotic Controlled Substance, and as stated
15 earlier, this is a violation of Title 21 of the United
16 States Code, Section 841(a)(1). Do you understand
17 that?

18 A. Yes, Your Honor.

19 Q. This is a felony and as such, you cannot be
20 proceeded against unless there is an indictment filed
21 against you. However, under paragraph 1 of the plea
22 agreement, the original of which has been submitted to
23 the court, paragraph 1 provides that you agree waive
24 indictment by a grand jury and to enter a plea of
25 guilty to the charge contained in the information. And

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1 this plea agreement was signed by you yesterday?

2 A. Yes, Your Honor.

3 Q. Also signed by your counsel yesterday and
4 counsel for the United States.

5 Since you have agreed to waive indictment by
6 the grand jury, we will now go ahead with the waiver of
7 indictment proceeding. And at this time the court will
8 inform you as follows:

9 You have the constitutional right to be
10 charged by an indictment of a grand jury. However, you
11 can waive that indictment and consent to being charged
12 by information of the United States Attorney.

13 What you have in front of you is an
14 information. In other words, instead of an indictment,
15 this felony charge against you is now being brought by
16 the United States Attorney by the filing of this
17 information. However, unless you waive indictment, you
18 may not be charged with a felony unless a grand jury
19 finds by return of an indictment that there is probable
20 cause to believe that a crime has been committed and
21 that you did commit said crime. If you do not waive
22 indictment, the government may present the case to the
23 grand jury and request the grand jury to indict you.

24 Now, this is what a grand jury is. It is
25 composed of at least 16, that's the minimum, and not

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District Court of Guam

1 more than 23 persons, that's the maximum; and that at
2 least 12 grand jurors must find that there's probable
3 cause to believe you did commit the crime with which
4 you are charged before you may be indicted. Now, the
5 grand jury, if this matter is presented to the grand
6 jury, might or might not indict you. However, if you
7 waive indictment by the grand jury, this case will
8 proceed against you on the U.S. Attorney's information
9 just as though you had been indicted.

10 A. (Nodding.)

11 Q. Now, have you discussed this matter of waiving
12 your right to indictment by a grand jury with your
13 attorney, Mr. Phillips?

14 A. Yes, Your Honor, I have.

15 Q. Do you now understand your right to indictment
16 by a grand jury?

17 A. Yes, Your Honor.

18 Q. Were any threats or promises made to induce
19 you to waive indictment?

20 A. Ah --

21 (Pause to confer with defense counsel.)

22 A. Oh, no. No, Your Honor.

23 Q. Very well. Do you wish to waive your right to
24 indictment by a grand jury? Do you wish to give up
25 your right to indictment by a grand jury?

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1 A. Yes, Your Honor.

2 THE COURT: Mr. Phillips, do you know of any
3 reason why the defendant should not waive indictment?

4 MR. PHILLIPS: No, Your Honor.

THE COURT: You may sign the waiver.

8 THE COURT: An order will be entered in the
9 record to the effect that it is a finding of the court
10 that the waiver of indictment is knowingly and
11 voluntarily made by the defendant, and that such waiver
12 of indictment is accepted by the court.

13 We will proceed with the arraignment of this
14 defendant.

15 Q. Mr. Manibusan, you have a copy of the
16 information before you?

17 A. Yes, Your Honor, I do.

Q. You have indicated to the court that you understand what the charge is against you --

20 A. Yes, Your Honor.

Q. -- in the course of the waiver of indictment proceeding.

23 A. Yes, Your Honor.

Q. Are you ready to enter a plea at this time as to whether you are guilty or not guilty of the charge

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District Court of Guam

1 contained in the information which has to do with
2 possession with intent to distribute heroin, in
3 violation of Section 21 of the United States Code,
4 Title 21?

5 A. Yes, Your Honor.

6 Q. Section 841. And how do you plead to the
7 charge, guilty or not guilty?

8 A. Guilty, Your Honor.

9 Q. Before the court will accept your plea of
10 guilty, you have to answer certain questions propounded
11 by the court, and this is for the purpose of
12 ascertaining, first, that your plea of guilty is a
13 voluntary plea; second, that on the basis of facts
14 which you may so narrate to the court, or which facts
15 may be stated to the court by the prosecution, all of
16 the essential elements of the offense have been met.

17 And once again, you are informed by the court
18 that you are required to answer all of the court's
19 questions truthfully.

20 A. Yes, Your Honor, I understand.

21 Q. Have you fully discussed this charge and the
22 case with Mr. Phillips as your counsel?

23 A. Yes, Your Honor.

24 Q. Are you fully satisfied with the counsel,
25 representation and advice given to you by Mr. Phillips

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District Court of Guam

1 as your attorney?

2 A. Yes, Your Honor, I am.

3 Q. There is a plea agreement, as stated by the
4 court earlier. We had already gone through paragraph 1
5 of the plea agreement; however, on paragraph 2 --

6 You have a copy of the plea agreement?

7 MR. PHILLIPS: Yes, Your Honor.

8 THE COURT: You agreed to cooperate fully and
9 truthfully with the federal investigators relative to
10 any illegal narcotic activities that you may be aware
11 of, and that if necessary, you will testify if
12 requested to do so. Also, that the extent of your
13 cooperation will be made known to the court by the
14 United States prior to your sentencing.

15 You also stated that it is your further
16 understanding that you will remain liable and subject
17 to prosecution for any criminal drug scheme that you
18 may be aware of and that you do not fully advise the
19 United States of, or for any material omission in that
20 regard. On its part the United States Attorney's
21 Office in Guam will not charge you with any additional
22 federal non-violent narcotic violation that you may
23 reveal to the federal investigators. Also, that this
24 plea will have no impact on the local murder trial that
25 is pending against you in the Superior Court for which

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District Court of Guam

1 you have elected to go to trial.

2 Also it's stated that it is your understanding
3 that the maximum sentence for this offense is a term of
4 imprisonment of 20 years, together with a -- together
5 with a fine of one million dollars, and any restitution
6 which may be ordered by the court. And if imprisonment
7 is ordered by the court, there will be a period of,
8 minimum term of three-year term of supervised release.

9 Now with regard to sentencing, the government
10 is free to recommend any sentence it deems appropriate,
11 and you are also free to argue for any sentence that
12 you may deem appropriate.

13 A. (Nodding.)

14 Q. As to the matter of fine, that is left up to
15 the discretion of the court.

16 And the government on its part, if your
17 cooperation is full and truthful, will recommend a
18 prison sentence of not more than ten years; and the
19 government will be the sole judge of whether or not
20 your cooperation is full and truthful, and may require
21 you to take a polygraph examination in that regard.

22 If the government makes no recommendation on
23 the ten-year maximum, then you may be faced with a
24 sentence of not more than 20 years, which is a
25 statutory maximum. And once again, you and the

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Official Court Reporter
District Court of Guam

1 government are free to argue before the court relative
2 to sentencing. And if your plea of guilty in this case
3 is accepted and you are sentenced on the basis of the
4 charge contained in this information, then all counts
5 in Criminal Case 89-50 against you will be dismissed.
6 You understand that?

7 A. Yes, Your Honor.

8 Q. Also paragraph 4, it is your understanding
9 that this plea agreement depends on your full and
10 truthful cooperation, and that should there be any
11 material omission or intentional misstatement, that the
12 government may then move to set aside this plea
13 agreement, to have it declared null and void.

14 And paragraph 5 has to do with the
15 continuation of the sentencing until after the
16 indictment and trial of any associates involved. And
17 that should there be a continuation of the scheduling
18 of sentencing, that you are waiving whatever rights you
19 may have under the Speedy Sentencing provision of the
20 Speedy Trial Act. Do you understand that?

21 A. Yes, Your Honor.

22 Q. Paragraph 6 has to do with your other
23 constitutional rights, and that will be read by the
24 court later on.

25 Now, you have stated that you have understood

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District Court of Guam

1 all of the paragraphs which we had gone through on the
2 plea agreement and then you signed it, this plea
3 agreement, yesterday. Before you signed it, you have
4 read it and discussed it with your attorney?

5 A. Yes, Your Honor.

6 Q. And your attorney explained it to you?

7 A. Yes, Your Honor.

8 Q. And then you signed it?

9 A. Yes, Your Honor.

10 Q. And you signed it voluntarily?

11 A. Yes, Your Honor, I did.

12 THE COURT: Very well. The record will show
13 that the plea agreement executed by the parties will be
14 accepted by the court, and any relevant portions of
15 that plea agreement will be incorporated in a judgment
16 to be handed down by the court at a later date.

17 Q. Now, aside from the plea agreement, has anyone
18 made any promises or assurances to you of any kind in
19 an effort to induce you to enter a plea of guilty in
20 this case?

21 A. Uh, No, Your Honor.

22 Q. Has anyone attempted in any way to force you
23 to plead guilty in this case?

24 A. No, Your Honor.

25 Q. Mr. Manibusan, the charge against you in this

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District Court of Guam

1 case is a felony. Do you understand that if your plea
2 of guilty is accepted by the court, you will be
3 adjudged guilty of that offense charged against you,
4 and that adjudication may deprive you of certain
5 valuable civil rights, such as the right to vote, the
6 right to hold public office, the right to serve on a
7 jury, and the right to possess any kind of firearm; do
8 you understand?

9 A. Yes, I understand, Your Honor.

10 Q. These and the others mentioned by the court
11 relative to the statutory penalties are some of the
12 consequences of your plea of guilty if accepted by the
13 court.

14 Now also under the law, there's the statutory
15 special assessment of \$50 per felony count. However,
16 under the existing current status of this matter in the
17 Ninth Circuit Court of Appeals which has declared it to
18 be unconstitutional, its finality has not yet been
19 determined because there's a possibility it may go all
20 the way up to the Supreme Court. However, if it's
21 determined to be final, then at that time the court
22 will impose the assessment fee of \$50. If it's
23 declared to be unconstitutional in its final form, then
24 the court wil not include the assessment fee in the
25 judgment. Do you understand that?

Wanda M. Miles
Official Court Reporter
District Court of Guam

1 A. Yes, Your Honor.

2 Q. In other words, this assessment fee is being
3 deferred until a later date.

4 The record will show that the commission of
5 this offense is before the effective date of the
6 Sentencing Guidelines, hence, the provision of the
7 Sentencing Guidelines as promulgated by the United
8 States Sentencing Commission will not apply to this
9 case.

10 The other rights which have been contained in
11 the plea agreement which has not yet been addressed are
12 as follows:

13 First, you have entered a plea of guilty to
14 this charge. The court will now advise you that you
15 have a right to enter a plea of not guilty. And if you
16 had entered a plea of not guilty and persisted thereto,
17 you would then have the right to a trial by jury,
18 during which you would also have the right to the
19 assistance of counsel for your defense; the right to
20 see and hear all the witnesses and have them cross-
21 examined in your defense by your counsel here in open
22 court; the right on your own part to decline to
23 testify, that is, you have the right to refuse to
24 testify unless you voluntarily elected to do so in
25 your own defense; you also have the right to the

Wanda M. Miles
Official Court Reporter
District Court of Guam

1 issuance of subpoenas or compulsory process, in other
2 words, to have witnesses subpoenaed to come to court
3 to testify in your defense, if you have any.

4 Those are some of your rights if you had
5 entered a plea of not guilty. However, you have
6 entered a plea of guilty, and if that plea of guilty is
7 accepted by the court, then you are waiving your right
8 to a jury trial and all of the other rights associated
9 with a jury trial as I have just described them to you.
10 You understand that?

11 A. Yes, I understand, Your Honor.

12 Q. Also, by your plea of guilty, the court will
13 have to ask you certain questions, and some of your
14 answers may be incriminating. However, you have waived
15 your right to self-incrimination by your plea of
16 guilty; do you understand that?

17 A. Yes, I understand, Your Honor.

18 Q. Now the essential elements of the offense
19 to which you have entered a plea of guilty, which
20 is possession with intent to distribute heroin, in
21 violation of Section 841(a)(1) of Title 21, United
22 States Code, are as follows:

23 That you, the defendant, did knowingly and
24 willfully possess heroin as charged in the information;
25 and second, that you did possess the substance with

Wanda M. Miles
Official Court Reporter
District Court of Guam

1 intent to distribute the said substance.

2 Now the phrase "to possess with intent to
3 distribute" simply means to possess with intent to
4 deliver or transfer possession of a controlled
5 substance to another person with or without any
6 financial interest in the transaction. Those are
7 the essential elements of the offense.

8 Now, you can state to the court the facts and
9 circumstances surrounding the commission of the offense
10 which is alleged to have taken place on or about early
11 1987 here in Guam, or you may defer to the prosecution
12 narrating to the court what the prosecution will
13 present in evidence to the jury if this case should go
14 to trial. Which is your preference?

15 (Pause while defendant conferred with
16 counsel.)

17 THE DEFENDANT: Yeah, I defer to the
18 prosecution.

19 THE COURT: Mr. Black.

20 MR. BLACK: Yes, Your Honor. In part, if
21 this case would have gone to trial, part of the
22 evidence would have demonstrated that Joseph Manibusan
23 would get heroin from -- indirectly from Melwert
24 Tmetuchl, and basically when he had this heroin in the
25 house, that he would involve his brothers, in this case

Wanda M. Miles
Official Court Reporter
District Court of Guam

1 John Manibusan, to help cut up the heroin, dime it up
2 into bindles or into caps, and that he would also
3 involve his brother John in distribution of some of
4 that heroin. And that the evidence would show that
5 this happened in early 1987, in the District of Guam,
6 and that John Manibusan knew it was heroin at the time
7 he assisted his brother.

8 THE COURT: Mr. Manibusan, you have heard the
9 Assistant United States Attorney state to the court
10 what the evidence will be if this case should go to
11 trial. Do you agree with those facts as so narrated
12 to the court by Mr. Black, or do you take exception or
13 disagree?

14 THE DEFENDANT: Yes, I agree, Your Honor.

15 THE COURT: Very well. Mr. Manibusan, once
16 again, how do you plead to the charge, guilty or not
17 guilty?

18 THE DEFENDANT: Guilty, Your Honor.

19 THE COURT: Very well. The court, being
20 satisfied with the responses given during this hearing,
21 makes the following finding on the record.

22 It is the finding of the court in the case of
23 the United States against John G. Manibusan that the
24 defendant is fully competent and capable of entering
25 an informed plea, and that the plea of guilty is a

Wanda M. Miles
Official Court Reporter
District Court of Guam

1 knowing and voluntary plea, supported by an independent
2 basis in fact containing each of the essential elements
3 of the offense.

4 The defendant's plea of guilty is therefore
5 accepted by the court, and he is now adjudged guilty of
6 that offense, which is possession with intent to
7 distribute heroin, in violation of Section 841(a)(1) of
8 Title 21 of the United States Code.

9 The court will order a presentence
10 investigation, and the presentence report arising out
11 of said investigation will be due and filed in court
12 two weeks before sentencing.

13 And unless there's any objection, the court
14 will set this case, set this matter for sentencing
15 Friday, December 7th, at 9:30 in the morning.

16 THE CLERK: That's Thursday.

17 THE COURT: Oh, Thursday. Thursday, December
18 7th.

19 THE CLERK: Yes, sir.

20 THE COURT: 9:30 in the morning.

21 You will be given the presentence report, you
22 and your counsel, for your review at least two weeks
23 before the sentencing date so that you can be prepared
24 to make any comment or declare any approval or
25 disapproval of the presentence report on the date of

Wanda M. Miles
Official Court Reporter
District Court of Guam

1 sentencing. You understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: You had been before this court
4 and you had been ordered detained by the court in your
5 first appearance on the charge contained in the
6 superceding indictment; is that correct?

7 MR. PHILLIPS: That's correct, Your Honor.

8 THE COURT: Mr. Black, what is the position
9 of the government as to matter of release?

10 MR. BLACK: The defendant is in custody on
11 local homicide charges that are pending, so it's a
12 pretty moot point at this point. In this case we
13 hold the same position as to the defendant is held
14 without bail at this time pending sentencing.

15 THE COURT: You are presently under the
16 custody of --

17 THE DEFENDANT: Rosario Detention, Your Honor.

18 THE COURT: Government of Guam?

19 THE DEFENDANT: Yes.

20 THE COURT: On a charge which is pending
21 before the Superior Court, which charge is murder in
22 the first degree; is that it?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: So the issue of release at this
25 time will be moot as far as this court is concerned

Wanda M. Miles
Official Court Reporter
District Court of Guam

1 because even if you are released by this court, you
2 will still be in custody, so --

3 MR. PHILLIPS: Your Honor, we would ask that
4 we be allowed to come back, should the defendant be
5 found not guilty across the street, we would ask that
6 the court here hear us at that time.

7 THE COURT: Yes.

8 You understand that, Mr. Black?

9 MR. BLACK: Yes, I understand.

10 THE COURT: That if the defendant is found not
11 guilty in the Superior Court on the murder charge, that
12 he will have the opportunity to come before this court
13 and seek a release from this case.

14 MR. BLACK: We'll cooperate with the defense
15 attorney in terms of setting a date, Your Honor.

16 THE COURT: That matter will be noted in the
17 record.

18 Anything else?

19 THE CLERK: None, Your Honor.

20 THE COURT: Right now you will be returned to
21 the custody of the Government of Guam. You are in the
22 custody of the local government.

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And your sentencing once again
25 is scheduled for Thursday, December 7th, at 9:30.

Wanda M. Miles
Official Court Reporter
District Court of Guam

1 Court will stand in recess.

2 MR. BLACK: Thank you, Your Honor.

3 MR. PHILLIPS: Thank you, Your Honor.

4 (Proceedings concluded at 10:30 a.m.)

5 * * *

6

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9

CERTIFICATE OF REPORTER

10

11 CITY OF AGANA)
12)
13 TERRITORY OF GUAM) ss.
14

I, Wanda M. Miles, Official Court Reporter
of the District Court of Guam, do hereby certify the
foregoing pages 1-22, inclusive, to be a true and
correct transcript of the shorthand notes taken by me
of the within-entitled proceedings, at the date and
time therein set forth.

Dated this 7th day of April, 2005.

21

22

23

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25

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Official Court Reporter
District Court of Guam

UNITED STATES DISTRICT COURT

District of GUAMUNITED STATES OF AMERICA
v.JOHN G. MANIBUSAN
(Name of Defendant)**AMENDED JUDGMENT IN A CRIMINAL CASE**
(For Offenses Committed Prior to November 1, 1987)Case Number: CR-89-00104
USM Number: 00488-093MICHAEL PHILLIPS, Court Appointed Counsel
Defendant's Attorney**FILED**
DISTRICT COURT OF GUAM

APR 12 2006

MARY L.M. MORAN
CLERK OF COURTDate Offense 33 Count
Concluded 1987 Number(s) 1**THE DEFENDANT:**

pleaded guilty to count(s) 1

was found guilty on count(s) _____ after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section
21:841(a)(1) and 18:2Nature of Offense
POSSESSION WITH INTENT TO DISTRIBUTE HEROIN
(Occurring on or about early 1987, as charged in the sole count of the Information)

The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s).

Count(s) _____ (is) (are) dismissed on the motion of the United States.

IT IS THE JUDGMENT OF THIS COURT THAT:

The defendant JOHN G. MANIBUSAN, is hereby committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment for a term of twelve (12) years.

ORIGINAL

In addition to any conditions of probation imposed above. IT IS ORDERED that the conditions of probation set out on the reverse of this judgment are imposed.

EXHIBIT 3

CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant:

- 1) shall not commit another federal, state or local crime;
- 2) shall not leave the judicial district without the permission of the court or probation officer;
- 3) shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 4) shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 5) shall support his or her dependents and meet other family responsibilities;
- 6) shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 7) shall notify the probation officer within seventy-two hours of any change in residence or employment;
- 8) shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 9) shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 10) shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 11) shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 12) shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 13) shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 14) as directed by the probation officer, shall notify third parties of risks that may be occasioned by defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement;
- 15) shall pay any fine or obligation imposed by this judgment;
- 16) shall not possess a firearm or destructive device.

IT IS FURTHER ORDERED that the defendant shall pay a special assessment of \$ _____, for count(s) _____, which shall be due immediately as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

The court orders commitment to the custody of the Attorney General and recommends:

Defendant's Soc. Sec. No.: XXX-XX-7890

Defendant's Date of Birth: XX-XX-1959

Defendant's Mailing Address:

Talladega, AL

Defendant's Residence Address:

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____
with a certified copy of this judgment.

United States Marshal

By _____ Deputy Marshal